

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**UNITED STATES, *et al.*,**

***Plaintiffs,***

**- against -**

**GOOGLE LLC,**

***Defendant.***

**Civil Action No. 1:23-cv-00108  
(LMB) (JFA)**

**DEFENDANT GOOGLE LLC'S MOTION FOR LEAVE TO DEPOSE  
CERTAIN THIRD-PARTY WITNESSES  
AFTER THE CLOSE OF FACT DISCOVERY**

Defendant Google LLC ("Google"), through its undersigned counsel, hereby respectfully moves for leave to depose certain specifically identified third-party witnesses after the close of fact discovery on September 8, 2023, to accommodate the availability of these third-party witnesses and because at least one third party refuses to sit for a deposition before September 8, 2023. For the reasons set forth below, despite having timely noticed and pursued them, the parties have been unable to schedule these depositions prior to September 8. The parties met and conferred on August 25, 2023 to reach a resolution on the matters in this Motion but were unable to reach agreement. Accordingly, Google respectfully requests permission to take the following depositions after September 8 but before October 6, 2023, and asks that these depositions be treated for all purposes as if they had been taken before the fact discovery cutoff. (*See* Doc. 94). Granting this motion will not impede expert discovery or affect other deadlines in this case.

**NBC/Comcast:** On July 7, 2023, Plaintiffs noticed the third-party deposition of the President and Chief Business Officer for Global Advertising & Partnerships at NBCUniversal.

Google anticipates the witness will offer testimony concerning the use of ad tech tools by NBCUniversal. The deposition was originally noticed for August 16, 2023, but counsel for the third-party witness has informed Plaintiffs and Google that the witness is traveling internationally until September 20, and is therefore unavailable for a deposition until then. The witness' counsel has indicated that the witness would be available to be deposed on September 21, 22, 28 or 29, 2023.

**Meta:** On July 5, 2023, Google issued a Rule 30(b)(6) deposition notice to Meta Platforms, Inc. ("Meta") for a deposition to occur on August 29, 2023. Meta is a multinational technology conglomerate that owns and operates Facebook, Instagram, Threads, and WhatsApp, among other products and services. On July 10, 2023, Plaintiffs cross-noticed the deposition for the same date, with its own Rule 30(b)(6) notice. The parties have been independently negotiating the scope and breadth of the 30(b)(6) topics with Meta's counsel, who has informed the parties that it intends to designate two witnesses to respond to the parties' Rule 30(b)(6) topics. One witness, a Product Manager at Meta, is only available to sit for a deposition on September 18, 2023. Due to scheduling issues, the first available date to depose the other witness, a VP of Global Marketing, is September 28, 2023.

**Disney:** On August 18, 2023, Google issued a Rule 30(b)(6) deposition notice to The Walt Disney Company ("Disney"), a publisher of advertising-supported content and operator of ad tech products. Due to scheduling issues, the 30(b)(6) deposition of Disney will need to occur after September 8th.

**Open X:** On August 15, 2023, Plaintiffs noticed the deposition of the chief executive officer of OpenX, a programmatic ad tech company and competitor to Google. On August 17,

2023, Google cross-noticed the deposition. The witness's counsel has informed the parties that for personal reasons, the witness is unavailable to sit for a deposition until the first week of October.

**Index Exchange:** On August 17, 2023, Google noticed a Rule 30(b)(6) deposition of Index Exchange, Inc. ("Index Exchange"), an advertising technology company that competes with Google. The next day, Plaintiffs cross-noticed the Rule 30(b)(6) deposition. Counsel for Index Exchange has informed the parties that due to work and family commitments its Rule 30(b)(6) designee is unable to sit for a deposition until the week of September 24, 2023.

**Mediavine:** On August 18, 2023, Plaintiffs noticed a deposition of the co-founder of Mediavine, a company that offers services to publishers in the ad tech industry. Google cross-noticed the deposition on the same day. The witness's counsel has informed the parties that the deponent is traveling and will not be available to sit for a deposition before September 8, 2023, but is available to be deposed on September 22, 2023.

**GroupM:** On August 18, 2023, Plaintiffs issued a Rule 30(b)(6) deposition to GroupM, a leading media investment company. Counsel for GroupM has informed the parties that, due to previously arranged travel and personal commitments, GroupM's designee is not available to be deposed until September 25, 2023.

**Bo Bradbury:** On August 18, 2023 Google noticed the deposition of Bo Bradbury, an advertising agency executive. Counsel for Mr. Bradbury has not yet provided dates for his deposition. Google requests that the Court permit the deposition of Mr. Bradbury to occur after September 8 at a mutually agreeable time.

**Brian O'Kelley:** On August 18, 2023, Plaintiffs noticed the deposition of Brian O'Kelley, the former CEO of AppNexus, an advertising technology company that competes with Google. Google cross-noticed the deposition on the same day. Counsel for Mr. O'Kelley has not yet

provided dates for his deposition. Google requests that the Court permit the deposition of Mr. O'Kelley to occur after September 8 at a mutually agreeable time.

**News Corp:** On July 5, 2023, Google noticed a 30(b)(6) deposition of News Corp, a publisher. The parties later agreed that the deposition would take place on August 30, 2023. On August 24, 2023, News Corp informed Google that it refused to sit for a deposition until DOJ's motion for judgment on the pleadings (currently set for hearing on September 8, 2023) was resolved. Google disagrees with News Corp's position and unilateral decision to reschedule the deposition, but nonetheless does not want to be prejudiced by News Corp's refusal to appear before September 8. News Corp is available for a deposition on September 22, 2023.

**Jonathan Kanter and Susan Athey:** On August 4, 2023, Google provided Plaintiffs with notice of Google's intent to, pursuant to Rule 45, take Rule 30(b)(1) depositions of and collect documents from AAG Jonathan Kanter and Dr. Susan Athey in their individual capacities and not in their capacities as DOJ employees.<sup>1</sup> Google understands that DOJ's position as of August 25, 2023, is that these depositions and document productions should not occur until after DOJ's motion for judgment on the pleadings (currently set for hearing on September 8, 2023) is resolved. Google has offered to meet and confer with Plaintiffs following resolution of DOJ's motion for judgment on the pleadings and requests that any depositions and document production be permitted to occur after September 8 at a mutually agreeable time.

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<sup>1</sup> Counsel for Google learned on August 17 that the deposition notices provided to Plaintiffs via email on August 4 inadvertently did not contain the Rule 45 subpoenas. Google promptly (that same day, August 17) issued a revised deposition and document subpoena notice to Plaintiffs that included both the notices and the Rule 45 subpoenas for AAG Kanter and Dr. Athey.

Google requests that the Court grant this motion for leave to depose these witnesses after the close of fact discovery for the reasons set forth above. *See U.S. ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (“We afford substantial discretion to a district court in managing discovery and review discovery rulings only for abuse of that discretion.”). Google additionally requests that the Court allow the parties to use these depositions for all purposes as if they had occurred on or before September 8, 2023.

Dated: August 25, 2023

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Respectfully submitted,

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